

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

OUR CHILDREN’S EARTH FOUNDATION,

Plaintiff,

v.

MICHAEL S. REGAN, in his official capacity as
the Administrator of the United States
Environmental Protection Agency,

Defendant.

No. 20 Civ. 8232 (JPO)

[PROPOSED] ORDER

STIPULATION AND ORDER REGARDING ATTORNEYS’ FEES AND COSTS

WHEREAS, Plaintiff Our Children’s Earth Foundation (“OCE” or “Plaintiff”) filed its Complaint on October 2, 2020, against Andrew R. Wheeler, in his official capacity as the Administrator of the United States Environmental Protection Agency (“EPA” or “Defendant”), pursuant to section 304(a)(2) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7604(a)(2);

WHEREAS, Michael S. Regan was sworn in as EPA Administrator on March 11, 2021, and is automatically substituted as a party for former Administrator Andrew Wheeler, pursuant to Federal Rule of Civil Procedure 25(d);

WHEREAS, the merits of this action were resolved by a Consent Decree entered by this Court on January 19, 2022, Dkt. No. 30;

WHEREAS, the Consent Decree provided that Plaintiff may file a motion for costs of litigation (including attorneys’ fees) within 90 days of the entry of the Consent Decree, *see id.*

¶ 90, a deadline that this Court later extended to June 20, 2022, Dkt. No. 34, and again to August

22, 2022, Dkt. No. 36;

WHEREAS, all parties seek to resolve Plaintiff's claims for attorney's fees and costs on the terms provided herein, in the interest of judicial economy and without any admission of law or fact.

NOW, THEREFORE, Plaintiff and Defendant, intending to be bound by this Stipulation, hereby agree as follows:

1. As soon as practicable after the Court has endorsed and docketed this Stipulation as an Order of this Court, the United States shall pay \$49,000 to Plaintiff by electronic funds transfer in accordance with instructions provided to government counsel by Plaintiff's counsel. This payment shall constitute full satisfaction of any and all costs of litigation, including reasonable attorney fees, incurred by Plaintiff in connection with this action as of the date of entry of this Stipulation as an Order of the Court. Such payment releases the United States, including EPA and Administrator Michael S. Regan, from any claims regarding such fees and costs that Plaintiff have asserted or could have asserted under any provision of law in connection with this litigation as of the date of entry of this Stipulation.

2. Any obligation of the United States to expend funds under this Stipulation is subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341 ("Anti-Deficiency Act"). This Stipulation shall not be construed to require the United States to obligate or pay funds in contravention of the Anti-Deficiency Act.

3. The parties understand and agree that the amount agreed to is a compromise of a claim and there is no admission by either party regarding liability for, or the amount of, fees that could be sought or recovered in this action.

4. Plaintiff reserves the right to seek additional costs of litigation under applicable law, including reasonable attorneys' fees, incurred in connection with this case subsequent to entry of this Stipulation as an Order of the Court, as provided by Paragraph 21 of the Consent Decree. Defendant reserves the right to oppose any such request for additional costs and attorney fees.

5. The Court shall retain jurisdiction to enforce the terms of this Stipulation.

6. The undersigned representatives of the parties certify that they are fully authorized by the parties they represent to enter into and execute the terms and conditions of this Stipulation. By signature below, all parties consent to this Stipulation.

7. This Stipulation is subject to the approval of the Court. In the event that the Court declines to approve this Stipulation, it shall be null and void, with no force or effect.

COUNSEL FOR PLAINTIFF:

Dated: July 21, 2022



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Dated: July 21, 2022

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SO ORDERED on this _____ day of _____, 2022.

Hon. J. Paul Oetken
United States District Judge